Supreme Court, U.S.
FILED

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In the

SUPREME COURT OF THE UNITED STATES

CIT LEASING CORPORATION

Petitioner

vs.

DENTON CENTRAL APPRAISAL DISTRICT and DENTON APPRAISAL REVIEW BOARD

Respondents

On Petition for Writ of Certiorari to the Court of Appeals for the Second District of Texas at Fort Worth

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PETITION FOR WRIT OF CERTIORARI

Melinda D. Blackwell
Petitioner's Counsel of Record
Brusniak, McCool & Blackwell, P.C.
17400 Dallas Parkway, Suite 112
Dallas, Texas 75287-7305
(972)250-6363
(972)250-3599 (telecopier)

John Brusniak, Jr.
Brusniak, McCool & Blackwell, P.C.
G. Walter McCool
Brusniak, McCool & Blackwell, P.C.

ATTORNEYS FOR PETITIONER

QUESTION PRESENTED

Do property taxes require the same meaningful notice required by due process for other forms of property deprivation?

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

Petitioner is CIT Leasing Corporation. CIT Leasing Corp. is a subsidiary of CIT Group, Incorporated.

Respondents are the Denton Central Appraisal District and Denton Appraisal Review Board.

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The judgment of the Court of Appeals for the Second District of Texas is located at 115 S.W.3d 261.

The denial by the Texas Supreme Court of the petition for discretionary review is located at 2004 Tex. LEXIS 55.

The denial by the Texas Supreme Court of the motion for rehearing from the denial of petition for review is located at 2004 Tex. LEXIS 263.

BASIS FOR JURISDICTION

The judgment of the Court of Appeals for the Second District of Texas was entered on August 25, 2003. On January 16, 2004, the Texas Supreme Court denied Petitioner's petition for review. Finally, on March 26, 2004, the Texas Supreme Court denied Petitioner's motion for rehearing from the denial of petition for review. The jurisdiction of this Court is invoked under 28 U.S.C.S. §1257(a).

STATUTORY AND CONSTITUTIONAL PROVISIONS

Tex. Tax Code §25.19
(included unabridged in the appendix)

(a) By May 15 or as soon thereafter as practicable, the chief appraiser shall deliver a clear and understandable written notice to a property owner of the appraised value of the property owner's property if:

> (1) the appraised value of the property is greater than it was in the preceding year;
>
> (2) the appraised value of the property is greater than the value rendered by the property owner; or
>
> (3) the property was not on the appraisal roll in the preceding year.

(b) The chief appraiser shall separate real from personal property and include in the notice for each:

*****

> (7) a detailed explanation of the time and procedure for protesting the value;
>
> (8) the date and place the appraisal review board will begin hearing protests; and

*****

(h) A notice required by Subsection (a) or (g) must be in the form of a letter.

(i) Delivery with a notice required by Subsection (a) or (g) of a copy of the pamphlet published by the comptroller under Section 5.06 or a copy of the notice published by the chief appraiser under Section 41.70 is sufficient to comply with the requirement that the notice include the information specified by Subsection (b)(7) or (g)(3), as applicable.

(j) The chief appraiser shall include with a notice required by Subsection (a) or (g):

(1) a copy of a notice of protest form as prescribed by the comptroller under Section 41.44(d); and

(2) instructions for completing and mailing the form to the appraisal review board and requesting a hearing on the protest.

Tex. Tax Code §31.01
(included unabridged in the appendix)

(c) The tax bill or a separate statement accompanying the tax bill shall:

(1) identify the property subject to the tax;

(2) state the appraised value, assessed value, and taxable value of the property;

(3) if the property is land appraised as provided by Subchapter C, D, E, or H, Chapter 23, state the market value and the taxable value for purposes of deferred or additional taxation as provided by Section 23.46, 23.55, 23.76, or 23.9807, as applicable;

(4) state the assessment ratio for the unit;

(5) state the type and amount of any partial exemption applicable to the property, indicating whether it applies to appraised or assessed value;

(6) state the total tax rate for the unit;

(7) state the amount of tax due, the due date, and the delinquency date;

(8) explain the payment option and discounts provided by Sections 31.03 and 31.05, if available to the unit's taxpayers, and state the date on which each of the discount periods provided by Section 31.05 concludes, if the discounts are available;

(9) state the rates of penalty and interest imposed for delinquent payment of the tax;

(10) include the name and telephone number of the assessor for the unit and, if different, of the collector for the unit; and

(11) include any other information required by the comptroller.

Tex. Tax Code §41.411

(a) A property owner is entitled to protest before the appraisal review board the failure of the chief appraiser or the appraisal review board to provide or deliver any notice to which the property owner is entitled.

(b) If failure to provide or deliver the notice is established, the appraisal review board shall determine a protest made by

the property owner on any other grounds of protest authorized by this title relating to the property to which the notice applies.

(c) A property owner who protests as provided by this section must comply with the payment requirements of Section 42.08 or he forfeits his right to a final determination of his protest.

U.S. Const. Amend. 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend. 14, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The following statement of facts comes from the opinion issued by the Second District Court of Appeals. Petitioner accepts this version of the facts with the exception of the court's assertion that Respondents sent the required notice in November 1998. In fact, Respondents' constituent taxing units sent a final tax bill, not the notice of appraised value required by Section 25.19 of the Texas Tax Code.

> CIT is the owner of an airplane that was appraised for taxation by the Appraisal District for the 1998 tax year. In November 1998, the Denton County Tax Office notified CIT [by sending the tax bill] that the property had been added to the 1998 appraisal roll and informed CIT of the appraised value of the aircraft, the amount of taxes owed on the property, and the delinquency date for those taxes.
>
> In March 2000, after paying the taxes assessed, CIT filed a notice of protest alleging that the Appraisal District had failed to provide it with notice of the appraised value of the aircraft as required by section 25.19 of the Texas Tax Code ("the Code").
>
> *****
>
> The Denton Appraisal Review Board held a hearing on CIT's notice of protest on March 22, 2000, and determined that the protest was untimely.[1]

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[1] Denton Cent. Appraisal Dist. v. CIT Leasing Corp., 115 S.W.3d 261, 263 (Tex. App. - Ft. Worth 2003, pet. denied)(*see* appendix p. ii).

Petitioner then filed suit in the 393rd District Court of Denton County, Texas to void the 1998 assessment of the aircraft. That court granted Petitioner's summary judgment motion and denied that of Respondents. Accordingly, the court ordered the aircraft removed.

Respondents appealed to the Court of Appeals for the Second District of Texas, and that court reversed and rendered summary judgment for Respondents.

Petitioner first raised the federal question of due process in its brief to the Second District Court of Appeals. The court addressed the question by stating that, "section 41.411 gives the property owner the opportunity to be heard at some stage of the administrative proceeding and in the trial court, satisfying due process."[2] According to the court's opinion, due process affords only the opportunity to be heard at some point before the final assessment of taxes.[3] The court declined to review the question of whether a final tax bill, based on the certified appraisal rolls and containing no protest information, satisfies the notice requirement of due process.

Petitioner appealed to the Texas Supreme Court on due process and other grounds, but the petition and motion for rehearing from that petition were both denied.

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[2] *Id.* at 266.
[3] *Id.* at 265-66

REASONS FOR GRANTING THE PETITION

When property is taken by the state, due process protection is mandated by the Fifth Amendment of the Constitution, as applied to the states through the Fourteenth Amendment. The Fifth Amendment of the United States Constitution provides that no person, "shall be deprived of life, liberty or property, without due process of law...."[4] This requirement is extended to the states through the 14th Amendment, which guarantees that no state shall "deprive any person of life, liberty or property, without due process of law... ."[5]

The Texas Property Tax Code meets the due process requirement by requiring an early, detailed notice of the property valuation, which becomes the basis for taxation, including a specific notice of the remedies available to the taxpayer.[6] In this case, the Texas Court of Appeals judicially repealed the due process notice provision.

Due Process requires notice and an opportunity for hearing before a deprivation through property taxation can occur.

To establish whether a taking of life, liberty or property has occurred without due process of law, a two-step analysis is required.[7] The first step is to determine if a constitutionally cognizable life, liberty or property interest is implicated.[8] It is clear that the taking of property through taxation is a deprivation of "life, liberty, or property" that warrants constitutional protection.[9]

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[4] U.S. CONST. AMEND. V.
[5] U.S. CONST. AMEND. XIV.
[6] TEX. TAX CODE ANN. §25.19 (2001).
[7] Ingraham v. Wright, 430 U.S. 651, 672 (1977).
[8] *Id.*
[9] U.S. CONST. AMEND. XIV.

The property tax is the largest tax collected in the state of Texas.[10] The deprivation that occurs through taxation is not limited to monetary resources, as the government holds a lien on property to recover unpaid taxes. Failure to remit property taxes can result in a forcible taking of the property subject to taxation.[11] Taxation is a deprivation of property that must be afforded procedural safeguards in order to preserve due process rights.[12] It is constitutionally required that the taxation of CIT by the Denton Central Appraisal District be accomplished under the protection of due process.

The second step is to "determine what process is due under the circumstances, and whether the complainant has been accorded less than the requisite degree of procedural protection."[13] The basic elements of procedural due process are notice and hearing.[14] The Supreme Court addressed the requirements specific to deprivation by taxation by holding that "due process of law requires that after such notice as may be appropriate the taxpayer have opportunity to be heard as to the validity of a tax and the amount thereof."[15] CIT received no notice that the Denton Central Appraisal District had added CIT's property to the appraisal rolls for taxation and no notice of the appraised value of the property. CIT was deprived of its due process protection because the Denton Central Appraisal District failed to give notice of taxation as constitutionally required.

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[10] *Annual Property Tax Report: Tax Year 2004*, part 1, figure A, Texas Comptroller of Public Accounts, *at* http://www.window.state.tx.us/ taxinfo/ proptax/02annual/statewide.html (last visited June 10, 2004).
[11] TEX. TAX CODE ANN. §33.91 (2001).
[12] McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco, Dept. of Bus. Regulation of Florida, 496 U.S. 18, 36-7 (1990).
[13] Ingraham, 430 U.S. at 672.
[14] Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950).
[15] Turner v. Wade, 254 U.S. 64, 67 (1920).

Due Process requires that notice be given in a timely and meaningful manner before the property tax is final.

For notice to be constitutionally valid, it must be given in time to alert the taxpayer to the tax so that the taxpayer can have adequate opportunity for hearing. Notice of assessment that is given long after it is made does not meet the constitutional requirement of due process of law.[16] CIT never received notice of the assessment. It first learned of the tax when it received a tax bill from the Denton Central Appraisal District's constituent taxing units. Even if this tax bill is erroneously construed to be notice, as was done by the Texas Court of Appeals in its opinion, the due process requirement of notice is still not satisfied. The notice of assessment must be given to the taxpayer shortly after the assessment is made to safeguard the taxpayer's constitutional rights.

Notice must also be meaningful. Meaningful notice must include "notice reasonably calculated under all the circumstances, to appraise the interested parties of the pendency of the action and afford them an opportunity to present their objections."[17] The tax bill that CIT received six months after the assessment did not apprise CIT of its right to hearing nor of the statues under which it could protest the tax bill. It does not meet the constitutional definition of meaningful notice, nor does it meet the statutory definition of notice as described in Texas Tax Code Section 25.19(b)(7).[18] CIT was not notified as to what remedies were available to it to contest the assessment. Notice of the opportunity for hearing is especially important because taxpayers may not be familiar with their rights under the tax code and might not even realize they have a right to protest at all.

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[16] In re Chicago Rys. Co., 175 F.2d 282, 289 (7th Cir. 1949, cert. denied).
[17] Mullane, 339 U.S. at 314.
[18] TEX. TAX CODE ANN. §25.19 (2001).

Notice must also be given before the tax is final.[19] A property interest cannot be finally destroyed by the government without first granting some form of hearing.[20] Under Texas law, assessments that have been approved by the appraisal review board are considered final.[21] The tax against CIT was final before the tax authorities delivered the tax bill to CIT. Due to the lack of notice, CIT did not have an opportunity to protest the addition of its property to the appraisal roll for taxation before it became final on the appraisal district's rolls.

The Texas Tax Code requires that an appraisal district notify a property owner, such as CIT, whose property is added to the appraisal rolls for taxation for the first time.[22] The notice is to be delivered early in the appraisal process and must specify in detail the steps the property owner may take to protest and obtain a hearing on the district's determination of the property's appraised value before a tax may be lawfully assessed against the property.[23] The legislature drew a sharp contrast between the process due a property owner before a tax is assessed and the process that an owner receives after values are determined and taxes assessed. At that point, Texas Tax Code Section 31.01(c), which details the information that a tax bill must contain, makes no reference to late remedies that may be available to the property owner.[24]

In its opinion, the Texas Court of Appeals effectively repealed the minimal due process requirement. The court's statement that CIT was provided due process by a tax bill without detailed notice of protest procedures simply eviscerates the property owner's constitutional rights. A

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[19] Scott v. City of Toledo, 36 F. 385 (C.C.N.D. Ohio 1888).

[20] Logan v. Zimmerman Brush Co., 455 U.S. 422, 429-30 (1982).

[21] Bass v. Aransas County Indep. Sch. Dist., 389 S.W. 2d 165, 172 (Tex. App - Corpus Christi 1965, pet. denied).

[22] TEX. TAX CODE ANN. §25.19(a) (2001).

[23] TEX. TAX CODE ANN. §25.19 (2001).

[24] TEX. TAX CODE ANN. §31.01(c) (2001).

number of other Texas appellate courts have recognized that an appraisal district's failure to provide the initial notice, with the required notice of statutory protest and hearing procedures, violates a property owner's fundamental due process rights and voids the resulting tax assessment.[25] In its opinion, this Texas Court of Appeals effectively repealed the minimum due process required by the United State Constitution and the Texas Tax Code, and the Supreme Court of Texas sanctioned this result by refusing to review the decision.[26]

Lack of notice is a jurisdictional issue that renders the tax invalid.

Lack of notice is a jurisdictional defect.[27] When due process rights are violated, the government's entire claim to the property is invalid. Lack of notice is fatal to a claim of right by the government.[28] The government's claim of right to CIT's property tax is invalid because of the lack of notice given to CIT. CIT is under no obligation to exhaust its

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[25] *See, e. g.,* New v. Dallas Appraisal Review Bd., 734 S.W.2d 712, 714-15 (Tex. App. - Dallas 1987, writ denied); Appraisal Review Bd. of the El Paso County Cent. Appraisal Dist. v. Fisher, 88 S.W.3d 807 (Tex. App. - El Paso 2002, pet. denied); Harris County Appraisal Dist. v. Dincans, 882 S.W.2d 75 (Tex. App. - Houston [14th Dist.] 1995, writ denied); Harris County Appraisal Dist. v. General Elec. Corp., 819 S.W.2d 915, 920 (Tex. App. - Houston [14th Dist.] 1991, writ denied); D&M Vacuum Serv., Inc. v. Zavala County Appraisal Dist., 812 S.W.2d 435, 438 (Tex. App. - San Antonio 1991, no writ); Garza v. Block Distributing Co., 696 S.W.2d 259, 261-62 (Tex. App. - San Antonio 1985, writ ref'd n.r.e.); and Inwood Dad's Club, Inc. v. Aldine Indep. Sch. Dist., 882 S.W.2d 532 (Tex. App. - Houston [1st Dist.] 1994, no writ).

[26] Denton Cent. Appraisal Dist. v. CIT Leasing Corp., 115 S.W.3d 261 (Tex. App. - Ft. Worth 2003, pet. denied); CIT Leasing Corp. v. Denton Cent. Appraisal Dist., 2004 Tex. LEXIS 55 (Tex. 2004); and CIT Leasing Corp. v. Denton Cent. Appraisal Dist., 2004 Tex. LEXIS 263 (Tex. 2004)

[27] Benoit v. Panthaky, 780 F.2d 336, 339 (3rd Cir. 1985).

[28] Tumulty v. Dist. of Columbia, 102 F.2d 254, 262 (D.C. Cir 1939).

administrative remedies under Tex Tax Code 41.411 because the Denton Central Appraisal District did not obtain jurisdiction over CIT's property by providing the requisite notice of appraised value.[29] The case of *In re Chicago Railways Co.* is analogous to the present one.[30] Chicago Railways did not receive notice of assessment from the taxing authority. The court held that:

> Notice to the property owner is jurisdictional and must precede any change or reassessment of property after an assessment has once been made. An assessment made without notice or opportunity for hearing, which would be conclusive upon the taxpayer, would be invalid. If the taxpayer here had received notice of the assessment of the land as improved, within the time provided by statue, and there had been no previous valuation of the land for the particular year in question, then the argument of the State's attorney that the taxpayer should have applied to the board of appeals for any desired correction would have force. Here, the assessment was made and subsequently changed without notice to the taxpayer. The circuit Court was right in holding that the tax was invalid.[31]

Like Chicago Railways, CIT did not receive notice of the assessment against it. The only factual difference is the fact that CIT's aircraft had never before been included on the appraisal role. As in *Chicago Railways*, the tax should therefore be declared invalid.

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[29] TEX. TAX CODE ANN. §41.411 (2001).
[30] In re Chicago Rys. Co., 175 F.2d at 289.
[31] *Id.*

The Guarantee of Due Process in Property Tax Administration is of National Importance.

Fairness in the administration of property taxes is of vital importance to the entire country. Every state uses the property tax to fund local government and thirty-eight states also use it in part to fund state budgets.[32] In California, Florida, Illinois, New York, and Texas, property tax accounts for an average of 38.5% of all taxes levied at the state and local levels, *a total of more than $120 billion of property tax per year in those five states alone.*[33] This issue affects every property owner in the United States, and the decision by the Texas Court of Appeals does away with the due process protections contained in the Tax Code and the Constitution.

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[32] *The Facts on Texas' Tax Climate: Texas Property Taxes*, The Tax Foundation, *at* http://www.taxfoundation.org/ texas (last visited June 10, 2004).

[33] *2002-03 Annual Report; Property Taxes; Table 4*, California Board of Equalization, *at* http://www.boe.ca.gov/ annual/statindex0203.htm#pt (last visited June 10, 2004); *Budgetary/Legal Basis Annual Report*, p. 2, California State Controller's Office, *at* http://www.sco.ca.gov/pubs/index.shtml# stagovrep (last visited June 10, 2004); *2003 Annual Report*, p. 6 and 9, Florida Department of Revenue, *at* http://sun6.dms.state.fl.us/dor/report/ (last visited June 10, 2004); *Annual Report of Collections and Distributions: Fiscal Year 2001*, p. 15, Illinois Department of Revenue, *at* http://www.revenue.state.il.us/Statistics/index.htm (last visited June 10, 2004); *Balancing Act: Tax Reform Options for Illinois*, p. 39, Institute on Taxation and Economic Policy, *at* http://itepnet.org/ilmenu.htm (last visited June 10, 2004); *Comprehensive Annual Report for Fiscal Year Ended March 31, 2003*, p. 141, Office of New York State Comptroller, *at* http://www. osc.state.ny.us/finance/finreports/cafr03.pdf (last visited June 10, 2004); *Annual Report on Local Government: 2003*, p. 9, Office of the New York State Comptroller, *at* http://www.osc.state.ny.us/localgov/muni/anreport/ 2003annualreport.pdf (last visited June 10, 2004); *Annual Property Tax Report: Tax Year 2004*, part 1, figure A, Texas Comptroller of Public Accounts, *at* http://www.window.state.tx.us/taxinfo/proptax/02annual/statewide.html (last visited June 10, 2004). Figures are the latest available from each state ranging from 2001 to 2003.

It is easy to see how this situation can lead to abuse. First, an appraisal district fails to send a notice of appraised value that also provides protest information. Several months later, the property owner receives a tax bill with no information regarding protest, only the admonition that failure to pay the tax will result in a tax lien, foreclosure of any right to appeal, and possible judicial sale of the property. After paying the tax, the property owner is told that the tax bill was the notice and a protest is untimely. The requirement of due process is meant to prevent this situation, but the Texas Court of Appeals ruled that the preceding example comports with due process.

Conclusion

The Denton Central Appraisal District violated CIT's due process rights as guaranteed in the Fifth Amendment because it failed to give adequate notice of the tax assessment. This lack of notice renders the entire tax invalid because the appraisal district has no jurisdiction over the property. The Texas Court of Appeals erred in holding that the lack of notice did not affect the validity of the tax. Property tax affects the entire country, and this Court is the last resort to prevent the implementation of a system that will lead to nationwide abuse of the property taxpayers. Accordingly, Petitioner requests that this Court grant this petition for certiorari.

Respectfully submitted,

Melinda D. Blackwell
Petitioner's Counsel of Record
Brusniak, McCool & Blackwell, P.C.
17400 Dallas Parkway, Suite 112
Dallas, Texas 75287-7305
(972)250-6363
(972)250-3599 (telecopier)

John Brusniak, Jr.
Brusniak, McCool & Blackwell, P.C.
G. Walter McCool
Brusniak, McCool & Blackwell, P.C.

ATTORNEYS FOR PETITIONER

APPENDIX

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DENTON CENTRAL APPRAISAL DISTRICT AND DENTON APPRAISAL REVIEW BOARD, APPELLANTS v. CIT LEASING CORP., APPELLEE

NO. 2-02-404-CV

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

115 S.W.3d 261; 2003 Tex. App. LEXIS 7592

August 25, 2003, Delivered

SUBSEQUENT HISTORY: Petition for review denied by CIT Leasing Corp. v. Denton Cent. Appraisal Dist. & Denton Appraisal Review Bd., 2004 Tex. LEXIS 55 (Tex., Jan. 16, 2004)
Motion for rehearing on petition for review denied by CIT Leasing Corp. v. Denton Cent. Appraisal Dist., 2004 Tex. LEXIS 263 (Tex., Mar. 26, 2004)

PRIOR HISTORY: **[**1]** FROM THE 393RD DISTRICT COURT OF DENTON COUNTY.

DISPOSITION: Reversed and rendered.

COUNSEL: FOR APPELLANT: LAW OFFICES OF ROBERT E. LUNA, P.C., AND RANDEL B. GIBBS AND SHELBY C. REED, DALLAS, TEXAS.

FOR APPELLEE: BRUSNIAK MCCOOL & BLACKWELL, P.C., AND JOHN BRUSNIAK, JR., G. WALTER MCCOOL, AND MELINDA D. BLACKWELL, DALLAS, TEXAS.

JUDGES: PANEL A: CAYCE, C.J.; HOLMAN and GARDNER, JJ.

OPINIONBY: JOHN CAYCE

OPINION: [*262] Introduction

Denton Central Appraisal District and Denton Appraisal Review Board (collectively referred to as "the Appraisal District") appeal the trial court's entry of a no-evidence summary judgment for CIT Leasing Corp. ("CIT"). In five issues, the Appraisal District complains that the trial court erred in granting CIT's no-evidence motion for summary judgment and denying the Appraisal District's motion for **[*263]** summary judgment. We reverse and render.

Factual and Procedural Background

CIT is the owner of an airplane that was appraised for taxation by the Appraisal District for the 1998 tax year. n1 In November 1998, the Denton County Tax Office notified CIT that the property had been added to the 1998 appraisal roll and informed CIT of the appraised value of the aircraft, the amount of taxes owed on the property, and the delinquency date for those taxes.

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n1 This was the first year that the aircraft was placed on the tax appraisal roll.

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - -

[2]**

In March 2000, after paying the taxes assessed, CIT filed a notice of protest alleging that the Appraisal District had failed to provide it with notice of the appraised value of the aircraft as required by section 25.19 of the Texas Tax Code ("the Code"). TEX. TAX CODE ANN. § 25.19 (Vernon 2001). n2 CIT also sought an interstate allocation of the 1998 value of the aircraft under section 25.25 of the Code because it had not continually remained at the location indicated on the appraisal roll. *Id.* § 25.25(c). The Denton Appraisal Review Board held a hearing on CIT's notice of protest on March 22, 2000, and determined that the protest was untimely.

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n2 Section 25.19 requires the Appraisal District to provide notice of the appraised value to the property owner by May 15 of the tax year "or as soon thereafter as practicable." *Id.* § 25.19(a). Here, the Appraisal District did not provide the required notice until six months after it was due.

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - -

CIT then filed **[**3]** suit in the 393rd District Court of Denton County, Texas, to have the aircraft removed from the appraisal roll. CIT filed a no-evidence motion for summary judgment alleging that there was no evidence to show that the Appraisal District had sent it the notice of appraised value required under section 25.19 of the Code. In response, the Appraisal District filed a traditional motion for summary judgment alleging, among other things, that CIT's failure to exhaust the available administrative remedies provided

by the Code preempted it from obtaining judicial review. The trial court granted CIT's motion and denied the Appraisal District's motion. The trial court expressly ruled in its summary judgment that the addition of the property to the 1998 appraisal roll was void and that the Appraisal District had not acquired jurisdiction to appraise or list the property for taxation due to the district's failure to give CIT notice of appraised value. Accordingly, the trial court ordered the Appraisal District to remove the property from its 1998 appraisal roll.

Standard of Review

When both parties move for summary judgment and the trial court grants one motion and denies the other, the **[**4]** reviewing court should review both parties' summary judgment evidence and determine all questions presented. *Dow Chem. Corp. v. Bright*, 89 S.W.3d 602, 605, 46 Tex. Sup. Ct. J. 35 (Tex. 2002). The reviewing court should render the judgment that the trial court should have rendered. *Id.*

We will first decide whether the trial court erred in denying the Appraisal District's traditional motion for summary judgment. In a traditional summary judgment case, the issue on appeal is whether the movant met its summary judgment burden by establishing that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *S.W. Elec. Power Co. v. Grant*, 73 S.W.3d 211, 215, 45 Tex. Sup. Ct. J. 502 (Tex. 2002); *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678, **[*264]** 23 Tex. Sup. Ct. J. 7 (Tex. 1979). The burden of proof is on the movant, and all

doubts about the existence of a genuine issue of material fact are resolved against the movant. *S.W. Elec. Power Co.*, 73 S.W.3d at 215; *Rhone-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223, 42 Tex. Sup. Ct. J. 927 (Tex. 1999); *Great Am. Reserve Ins. Co. v. San Antonio Plumbing Supply Co.*, 391 S.W.2d 41, 47, 8 Tex. Sup. Ct. J. 374 (Tex. 1965). **[******5]** We must view the evidence and its reasonable inferences in the light most favorable to the nonmovant. *Great Am.*, 391 S.W.2d at 47. The summary judgment will be affirmed only if the record establishes that the movant has conclusively proved all essential elements of the movant's cause of action or defense as a matter of law. *Clear Creek Basin*, 589 S.W.2d at 678. When the trial court grants summary judgment on a specific ground, the summary judgment can only be affirmed if the ground on which the trial court granted relief is meritorious. *See Cincinnati Life Ins. Co. v. Cates*, 927 S.W.2d 623, 625-26, 39 Tex. Sup. Ct. J. 916 (Tex. 1996).

Exhaustion of Administrative Remedies

In its first issue, the Appraisal District contends that the trial court erred in denying the Appraisal District's motion for summary judgment dismissing CIT's suit because CIT did not timely avail itself of the mandatory, exclusive administrative remedies set forth in the Code for protesting lack of notice of appraised value. *See* TEX. TAX CODE ANN. § 41.411.

Section 42.09 of the Code specifically states that the "grounds of protest" authorized **[******6]** by the Code are exclusive and may not be raised as a basis for relief in a suit by the property owner. TEX. TAX CODE ANN. § 42.09. Accordingly, judicial review of administrative orders, such as a tax assessment, is not available unless

all administrative remedies have been pursued to the fullest extent. *Webb County Appraisal Dist. v. New Laredo Hotel, Inc.*, 792 S.W.2d 952, 954, 33 Tex. Sup. Ct. J. 653 (Tex. 1990); *City of Sherman v. Pub. Util. Comm'n*, 643 S.W.2d 681, 683, 26 Tex. Sup. Ct. J. 177 (Tex. 1983); *Lawler v. Tarrant Appraisal Dist.*, 855 S.W.2d 269, 271 (Tex. App.--Fort Worth 1993, no writ); *Dallas County Appraisal Dist. v. Lal*, 701 S.W.2d 44, 46 (Tex. App.--Dallas 1985, writ ref'd n.r.e); *Brooks v. Bachus*, 661 S.W.2d 288, 290 (Tex. App.--Eastland 1983, writ ref'd n.r.e.).

Section 41.44 sets forth the general requirements for filing a notice of protest. TEX. TAX CODE ANN. § 41.44. To be entitled to a hearing and determination of the protest, a taxpayer must file a written notice of protest with the appraisal review board before June 1, or not later than the thirtieth day after the date that [**7] notice was delivered to the property owner, whichever is later. *Id.* § 41.44(a). If the notice of protest is filed after this deadline, but before the appraisal review board approves the appraisal records, the taxpayer may still obtain a hearing if he shows good cause for his failure to file a timely notice. *Id.* § 41.44(b).

Section 41.411 entitles a property owner to protest the Appraisal District's failure to provide or deliver any notice to which the property owner is entitled. *Id.* § 41.411(a). If failure to provide or deliver the notice is established, the appraisal review board then makes a determination on the protest. *Id.* § 41.411(b). To be entitled to a final determination of the protest, however, the property owner must meet two conditions: (1) pay the amount of taxes due on the portion of the taxable value of the property that is not in dispute before the delinquency date; and (2) file the

notice of protest "prior to the date the taxes on the property to which the notice applies become delinquent." *Id.* §§ 41.411(c), 41.44(c), 42.08(b). Otherwise, the property owner forfeits his right to **[*265]** final determination of the protest. *Id.* § 41.411(c).

In **[**8]** the instant case, CIT received a tax assessment in November 1998 indicating the appraisal value of the aircraft and the amount of taxes assessed. According to the tax assessment, the delinquency date for the taxes was April 30, 1999. It is undisputed that CIT paid the taxes due on the aircraft in full before this delinquency date. CIT, however, did not file its notice of protest under section 41.411 until March 21, 2000, more than ten months after the April 30, 1999, delinquency date.

The protest procedure in section 41.411 is CIT's exclusive remedy for contesting the Appraisal District's failure to provide it with notice of the appraised value of the aircraft. Because CIT's notice of protest was not filed prior to the date the taxes would have become delinquent as required by section 41.411, CIT forfeited its right to a final determination of its protest. Thus, the trial court erred in denying the Appraisal District's motion for summary judgment, unless we determine that the trial court correctly determined that the Appraisal District's alleged failure to provide CIT timely notice of the appraised value voided the appraisal or violated CIT's due process rights.

Jurisdiction [9]**

CIT argues that it was not required to comply with the

Code's protest procedures because the Appraisal District's alleged failure to provide it notice of the appraised value of the property deprived the Appraisal District of jurisdiction and voided the tax appraisal. In support of this argument, CIT relies on *Appraisal Review Board of El Paso County Central Appraisal District v. Fisher*, 88 S.W.3d 807 (Tex. App.--El Paso 2002, pet. denied), and *Inwood Dad's Club, Inc. v. Aldine Independent School District*, 882 S.W.2d 532 (Tex. App.--Houston [1st Dist.] 1994, no writ). Neither case, however, is applicable here. *Fisher* predates the enactment of sections 25.19(d) and 41.411, and *Inwood* involved the question of whether a school district had authority to remove an ad valorem tax exemption.

Although section 25.19 of the Code requires the chief appraiser to deliver a written notice to a property owner of the appraised value of the property if the property was not on the appraisal roll in the preceding year, other related provisions of the Code express a clear legislative intent that the notice is a procedural requirement that does not affect the **[**10]** Appraisal District's jurisdiction. Subsections (a)(3) and (d) expressly provide that the taxpayer's failure to receive notice does not affect the validity of the appraisal or "the imposition of any tax on the basis of the appraisal." TEX. TAX CODE ANN. § 25.19(a)(3), (d); *see also Lal*, 701 S.W.2d at 48. Under subsection (e), notice may be dispensed with "if the amount of increase in appraised value is $ 1,000 or less." TEX. TAX CODE ANN. § 25.19(e). In addition, section 41.411 expressly grants the appraisal review board jurisdiction to hear taxpayer complaints regarding lack of notice. *Id.* § 41.411. Each of these provisions is evidence that the legislature did not intend that the notice required under section 25.19 be a prerequisite to a taxing district's jurisdiction. Therefore, we hold that

the failure to provide notice of appraised value is not jurisdictional and does not render an appraisal void.

Due Process

Additionally, CIT complains that the Appraisal District's failure to provide it with the required notice deprived CIT of due process. Due process affords a party the right to be heard before final **[**11]** assessment of the taxes; it does not detail the **[*266]** review mechanism. *Lal*, 701 S.W.2d at 47. In cases involving taxation, due process is satisfied if the taxpayer is given an opportunity to be heard before some assessment board at some stage of the proceedings. *Fisher*, 88 S.W.3d at 813; *Tex. Pipeline Co. v. Anderson*, 100 S.W.2d 754, 761-62 (Tex. Civ. App.--Austin, writ ref'd), *cert. denied*, 302 U.S. 724, 82 L. Ed. 559, 58 S. Ct. 45 (1937). Section 41.411 fully provides such an opportunity.

The purpose of section 41.411 is to determine whether a property owner failed to receive notice of the tax assessment, thereby depriving it of the right to be heard at the administrative level. *Harris County Appraisal Review Bd. v. Gen. Elec. Corp.*, 819 S.W.2d 915, 919 (Tex. App.--Houston [14th Dist.] 1991, writ denied). Under this section, after the property owner files a notice of protest with the appraisal review board, the board holds an evidentiary hearing to determine whether the property owner was sent or received the required notice. TEX. TAX CODE ANN. § 41.411(b); *Gen. Elec. Corp.*, 819 S.W.2d at 919. **[**12]** If the board determines that the owner was not provided the notice, the board then proceeds to hear and determine the owner's protest as to the appraised value or any other disputes the owner raises. TEX. TAX CODE ANN. § 41.411(c); *Gen. Elec. Corp.*, 819 S.W.2d at

919. If the owner is unsuccessful in his protest to the appraisal review board, the owner can appeal the board's order to the district court. TEX. TAX CODE ANN. § 42.01(1)(A). The district court will then review the board's order de novo. *City of Fort Worth v. Pastusek Indus., Inc.*, 48 S.W.3d 366, 370 (Tex. App.--Fort Worth 2001, no pet.); *Lal*, 701 S.W.2d at 45-46. Therefore, section 41.411 gives the property owner the opportunity to be heard at some stage of the administrative proceeding and in the trial court, satisfying due process.

The cases CIT cites in support of its due process argument are inapposite because they were decided prior to the enactment of section 41.411. n3 Before the enactment of section 41.411, the statutory scheme for property tax assessment often did not provide taxpayers with adequate remedies at **[**13]** law. *Lal*, 701 S.W.2d at 47. Thus, the courts developed equitable remedies in order to provide taxpayers with due process protections. *Id.* The addition of section 41.411, however, provided the due process protections absent under prior statutory procedure. TEX. TAX CODE ANN. § 41.411; *Lal*, 701 S.W.2d at 47.

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - -

n3 *See, e.g., Harris County Appraisal Dist. v. Dincans*, 882 S.W.2d 75, 79 (Tex. App.--Houston [14th Dist.] 1994, writ denied) (holding that, under the law as it existed at the time, the taxpayer was not required to exhaust administrative remedies because it did not receive notice of appraised value); *Gen. Elec. Corp.*, 819 S.W.2d at 920 (holding that appraisal district never acquired jurisdiction over the increase in value of the property where taxpayer filed a chapter 41 protest);

Bank of Am. Nat'l Trust & Sav. Ass'n v. Dallas Cent. Appraisal Dist., 765 S.W.2d 451, 454 (Tex. App.--Dallas 1988, writ denied) (holding that, under the law as it existed at the time, the appellant was denied procedural due process); *New v. Dallas Appraisal Review Bd.*, 734 S.W.2d 712, 716 (Tex. App.--Dallas 1987, writ denied) (holding that an appraisal district must deliver notice of appraised value before it obtains jurisdiction to increase a value).

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - -

[14]**

Conclusion

We hold that CIT's failure to timely protest the Appraisal District's alleged lack of notice precluded CIT from obtaining judicial review of the Appraisal District's 1998 tax assessment for the aircraft. Therefore, the trial court erred in denying the Appraisal District's motion for summary judgment and granting CIT's no-evidence motion. Accordingly, we sustain **[*267]** the Appraisal District's first issue, reverse the trial court's judgment, and render judgment for the Appraisal District. n4

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n4 The trial court granted CIT's no-evidence motion for summary judgment on the ground that the appraisal review board lacked jurisdiction. In light of our holdings that the appraisal review board did not lack jurisdiction over CIT and that CIT was not denied due

process, we need not address the remaining issues in this case. *See Cates*, 927 S.W.2d at 625-26 (holding that summary judgment can only be affirmed if the ground on which the trial court granted relief is meritorious).

---------- End Footnotes----------

JOHN CAYCE

CHIEF JUSTICE

CIT LEASING CORPORATION v. DENTON CENTRAL APPRAISAL DISTRICT AND DENTON APPRAISAL REVIEW BOARD

03-0924

SUPREME COURT OF TEXAS

2004 Tex. LEXIS 263

March 26, 2004, Order Pronounced

NOTICE: [*1]

DECISION WITHOUT PUBLISHED OPINION

PRIOR HISTORY: Denton County; 2nd district 02-02-00404-CV, 115 SW3d 261, 08-25-03. Denton Cent. Appraisal Dist. v. CIT Leasing Corp., 115 S.W.3d 261, 2003 Tex. App. LEXIS 7592 (Tex. App. Fort Worth, 2003)

OPINION: Motion for rehearing the petition for review denied.

CIT LEASING CORPORATION v. DENTON CENTRAL APPRAISAL DISTRICT AND DENTON APPRAISAL REVIEW BOARD

03-0924

SUPREME COURT OF TEXAS

2004 Tex. LEXIS 55

January 16, 2004, Order Pronounced

NOTICE: [*1]

DECISION WITHOUT PUBLISHED OPINION

PRIOR HISTORY: Denton County; 2nd district (02-02-00404-CV, 115 S.W.3d 261, 08-25-03). Denton Cent. Appraisal Dist. v. CIT Leasing Corp., 115 S.W.3d 261, 2003 Tex. App. LEXIS 7592 (Tex. App. Fort Worth, 2003)

OPINION: Petition for review denied.

No. 2000-60091-393

CIT LEASING CORP.,	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
vs.	§	DENTON COUNTY, TEXAS
	§	
DENTON CENTRAL	§	
APPRAISAL DISTRICT	§	
And DENTON APPRAISAL	§	
REVIEW BOARD,	§	
Defendants	§	393rd JUDICIAL DISTRICT

FINAL JUDGMENT

On the 10th day of July, 2002, came on to be heard Plaintiff CIT Leasing Corp.'s motion for no-evidence summary judgment and Defendants Denton central Appraisal District's and Denton Appraisal Review Board's motion for summary judgment.

After consider the pleadings, the responses, the affidavits and other evidence on file, the Court GRANTS Plaintiff's motion for no-evidence summary judgment in its entirety and DENIES Defendants' motion for summary judgment.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. The addition of thee property to the 1998 appraisal roll identified by the Denton Central Appraisal District as account number P922151 is void and Denton Central Appraisal District did not acquire jurisdiction to appraise or list the subject property for taxation for the 1998 tax year.
2. The Denton Central Appraisal District shall remove the property identified by the Denton

Central Appraisal District as account number P922151 from its 1998 appraisal roll.

3. The Denton Central Appraisal District shall certify the removal of the property identified by the Denton Central Appraisal District as account number P922151 from the 1998 appraisal roll to the taxing units in which the subject property is taxable in conformity with the post-appeal procedures provided by §42.41 of the Texas Property Tax Code.
4. Defendants hereby take nothing.
5. All costs of court are hereby taxed against Defendants.
6. Plaintiff is entitled to all writs, orders and processes necessary to effectuate this judgment.
7. This is the final judgment in this cause, prepared and signed in accordance with the Court's order signed August 20, 2002 directing Plaintiff to prepare adjudgment.
8. The Court denies all relief not expressly granted.

SIGNED this 28th day of October, 2002.

S/ Vicki Isaacs
PRESIDING JUDGE

APPROVED AS TO FORM:

BRUSNIAK HARRISON & MCCOOL, P.C.
17400 Dallas Parkway, Suite112
Dallas, Texas 75287
(972) 250-6363
(972) 250-3599[telecopier]

By: s/ Melinda D. Blackwell
John Brusniak, Jr.
State Bar No. 03261500
Melinda D. Blackwell
State Bar No. 0208400

ATTORNEYS FOR PLAINTIFF
CIT LEASING CORPORATION

LAW OFFICES OF ROBERT E. LUNA, P.C.
4411 North Central Expressway
Dallas, Texas 75205
(214) 521-8000
(214) 521-1738 [telecopier]

By: s/ Randel B. Gibbs
Randel B. Gibbs
State Bar No. 07852600
Andrea Sheehan
State Bar No. 24002935

ATTORNEYS FOR DEFENDANTS
DENTON CENTRAL APPRAISAL DISTRICT AND
DENTON APPRAISAL REVIEW BOARD

TAX CODE
TITLE 1. PROPERTY TAX CODE
SUBTITLE D. APPRAISAL AND ASSESSMENT
CHAPTER 25. LOCAL APPRAISAL

Tex. Tax Code § 25.19 (2004)

NOTICE: THIS SECTION CONTAINS MULTIPLE VERSIONS OF SUBD. (b)(5)

§ 25.19. Notice of Appraised Value

(a) By May 15 or as soon thereafter as practicable, the chief appraiser shall deliver a clear and understandable written notice to a property owner of the appraised value of the property owner's property if:

(1) the appraised value of the property is greater than it was in the preceding year;

(2) the appraised value of the property is greater than the value rendered by the property owner; or

(3) the property was not on the appraisal roll in the preceding year.

(b) The chief appraiser shall separate real from personal property and include in the notice for each:

(1) a list of the taxing units in which the property is taxable;

(2) the appraised value of the property in the preceding year;

(3) the taxable value of the property in the preceding year for each taxing unit taxing the property;

(4) the appraised value of the property for the current year and the kind and amount of each partial exemption, if any, approved for the current year;

NOTICE: FIRST OF TWO VERSIONS OF SUBD. (b)(5) As amended by Acts 1999, ch. 1358, § 4

(5) if the appraised value is greater than it was in the preceding year:

(A) the effective tax rate that would be announced pursuant to Chapter 26 if the total values being submitted to the appraisal review board were to be approved by the board with an explanation that that rate would raise the same amount of revenue from property taxed in the preceding year as the unit raised for those purposes in the preceding year;

(B) the amount of tax that would be imposed on the property on the basis of the rate described by Paragraph (A); and

(C) a statement that the governing body of the unit may not adopt a rate that will increase tax revenues for operating purposes from properties taxed in the preceding year without publishing notice in a newspaper that it is considering a tax increase and holding a hearing for taxpayers to discuss the tax increase;

NOTICE: SECOND OF TWO VERSIONS OF SUBD. (b)(5) As amended by Acts 1999, ch. 1517, § 1

(5) if the appraised value is greater than it was in the preceding year, the amount of tax that would be imposed on

the property on the basis of the tax rate for the preceding year;

(6) in italic typeface, the following statement: "The Texas Legislature does not set the amount of your local taxes. Your property tax burden is decided by your locally elected officials, and all inquiries concerning your taxes should be directed to those officials";

(7) a detailed explanation of the time and procedure for protesting the value;

(8) the date and place the appraisal review board will begin hearing protests; and

(9) a brief explanation that the governing body of each taxing unit decides whether or not taxes on the property will increase and the appraisal district only determines the value of the property.

(c) In the case of the residence homestead of a person 65 years of age or older that is subject to the limitation on a tax increase over the preceding year for school tax purposes, the chief appraiser shall indicate on the notice that the preceding year's taxes may not be increased.

(d) Failure to receive the notice required by this section does not affect the validity of the appraisal of the property, the imposition of any tax on the basis of the appraisal, the existence of any tax lien, or any proceeding instituted to collect the tax.

(e) The chief appraiser, with the approval of the appraisal district board of directors, may dispense with the notice required by Subsection (a)(1) if the amount of increase in appraised value is $ 1,000 or less.

(f) In the notice of appraised value for real property, the chief appraiser shall list separately:

(1) the market value of the land; and

(2) the total market value of the structures and other improvements on the property.

(g) By May 15 or as soon thereafter as practicable, the chief appraiser shall deliver a written notice to the owner of each property not included in a notice required to be delivered under Subsection (a), if the property was reappraised in the current tax year, if the ownership of the property changed during the preceding year, or if the property owner or the agent of a property owner authorized under Section 1.111 makes a written request for the notice. The chief appraiser shall separate real from personal property and include in the notice for each property:

(1) the appraised value of the property in the preceding year;

(2) the appraised value of the property for the current year and the kind of each partial exemption, if any, approved for the current year;

(3) a detailed explanation of the time and procedure for protesting the value; and

(4) the date and place the appraisal review board will begin hearing protests.

(h) A notice required by Subsection (a) or (g) must be in the form of a letter.

(i) Delivery with a notice required by Subsection (a) or (g) of a copy of the pamphlet published by the comptroller under

Section 5.06 or a copy of the notice published by the chief appraiser under Section 41.70 is sufficient to comply with the requirement that the notice include the information specified by Subsection (b)(7) or (g)(3), as applicable.

(j) The chief appraiser shall include with a notice required by Subsection (a) or (g):

(1) a copy of a notice of protest form as prescribed by the comptroller under Section 41.44(d); and

(2) instructions for completing and mailing the form to the appraisal review board and requesting a hearing on the protest.

NOTICE: SUBSECTION (k) IS EFFECTIVE JANUARY 1, 2004

(k) Notwithstanding any other provision of this section, the chief appraiser may not deliver a written notice concerning property that

is required to be rendered or reported under Chapter 22 until after the applicable deadline for filing the rendition statement or property report.

TAX CODE
TITLE 1. PROPERTY TAX CODE
SUBTITLE E. COLLECTIONS AND DELINQUENCY
CHAPTER 31. COLLECTIONS
Tex. Tax Code § 31.01 (2004)

§ 31.01. Tax Bills

(a) Except as provided by Subsection (f), the assessor for each taxing unit shall prepare and mail a tax bill to each person in whose name the property is listed on the tax roll or to the person's authorized agent. The assessor shall mail tax bills by October 1 or as soon thereafter as practicable. The assessor shall mail to the state agency or institution the tax bill for any taxable property owned by the agency or institution. The agency or institution shall pay the taxes from funds appropriated for payment of the taxes or, if there are none, from funds appropriated for the administration of the agency or institution. The exterior of the tax bill must show the return address of the taxing unit and must contain, in all capital letters, the words "RETURN SERVICE REQUESTED," or another appropriate statement directing the United States Postal Service to return the tax bill if it is not deliverable as addressed.

(b) The county assessor-collector shall mail the tax bill for Permanent University Fund land to the comptroller. The comptroller shall pay all county tax bills on Permanent University Fund land with warrants drawn on the General Revenue Fund and mailed to the county assessors-collectors before February 1.

(c) The tax bill or a separate statement accompanying the

tax bill shall:

(1) identify the property subject to the tax;

(2) state the appraised value, assessed value, and taxable value of the property;

(3) if the property is land appraised as provided by Subchapter C, D, E, or H, Chapter 23, state the market value and the taxable value for purposes of deferred or additional taxation as provided by Section 23.46, 23.55, 23.76, or 23.9807, as applicable;

(4) state the assessment ratio for the unit;

(5) state the type and amount of any partial exemption applicable to the property, indicating whether it applies to appraised or assessed value;

(6) state the total tax rate for the unit;

(7) state the amount of tax due, the due date, and the delinquency
date;

(8) explain the payment option and discounts provided by Sections 31.03 and 31.05, if available to the unit's taxpayers, and state the date on which each of the discount periods provided by Section 31.05 concludes, if the discounts are available;

(9) state the rates of penalty and interest imposed for delinquent
payment of the tax;

(10) include the name and telephone number of the assessor for the unit and, if different, of the collector for the unit; and

(11) include any other information required by the comptroller.

(d) Each tax bill shall also state the amount of penalty, if any, imposed pursuant to Sections 23.431, 23.54, 23.541, 23.75, 23.751, 23.87, 23.97, and 23.9804.

(e) An assessor may include taxes for more than one taxing unit in the same tax bill, but he shall include the information required by Subsection (c) of this section for the tax imposed by each unit included in the bill.

(f) A collector may provide that a tax bill not be sent until the total amount of unpaid taxes the collector collects on the property for all taxing units the collector serves is $ 15 or more. A collector may not send a tax bill for an amount of taxes less than $ 15 if before the tax bill is prepared the property owner files a written request with the collector that a tax bill not be sent until the total amount of unpaid taxes the collector collects on the property is $ 15 or more. The request applies to all subsequent taxes the collector collects on the property until the property owner in writing revokes the request or the person no longer owns the property.

(g) Except as provided by Subsection (f) of this section, failure to send or receive the tax bill required by this section does not affect the validity of the tax, penalty, or interest, the due date, the existence of a tax lien, or any procedure instituted to collect a tax.

(h) An assessor who assesses taxes for more than one taxing unit may prepare and deliver separate bills for the taxes of a taxing unit that does not adopt a tax rate for the year before the 60th day after the date the chief appraiser certifies the appraisal roll for the unit under Section 26.01 of this code or, if the taxing unit participates in more than one

appraisal district, before the 60th day after the date it receives a certified appraisal roll from any of the appraisal districts in which it participates. If separate tax bills are prepared and delivered under this subsection, the taxing unit or taxing units that failed to adopt the tax rate before the prescribed deadline must pay the additional costs incurred in preparing and mailing the separate bills in addition to any other compensation required or agreed to be paid for the appraisal services rendered.

(i) For a city or town that imposes an additional sales and use tax under Section 321.101(b) of this code, or a county that imposes a sales and use tax under Chapter 323 of this code, the tax bill shall indicate the amount of additional ad valorem taxes, if any, that would have been imposed on the property if additional ad valorem taxes had been imposed in an amount equal to the amount of revenue estimated to be collected from the additional city sales and use tax or from the county sales and use tax, as applicable, for the year determined as provided by Section 26.041 of this code.

(j) If a tax bill is mailed under Subsection (a) of this section to a mortgagee of a property, the mortgagee shall mail a copy of the bill to the owner of the property not more than 30 days following the mortgagee's receipt of the bill.

Supreme Court U.S.
FILED
JUL 29 2004

No. 04-4

IN THE

Supreme Court of the United States

CIT LEASING CORPORATION,

Petitioner,

v.

DENTON CENTRAL APPRAISAL DISTRICT
and DENTON APPRAISAL REVIEW BOARD,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND DISTRICT OF TEXAS AT FORT WORTH

BRIEF IN OPPOSITION

RANDEL B. GIBBS
Counsel of Record
ANDREA SHEEHAN
JOSEPH K. BALL
LAW OFFICES OF
ROBERT E. LUNA, P.C.
4411 North Central Expressway
Dallas, Texas 75205
(214) 521-8000

Counsel for Respondents

188815

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Respondent is dissatisfied with the Question Presented by Petitioner. The true Question Presented is:

> Does notice of a tax assessment, and an opportunity to correct any errors in such assessment, satisfy constitutional due process requirements?

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Texaco, Inc. v. Short, 454 U.S. 516 (1982) 5

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STATEMENT OF THE CASE

Respondent agrees with the Statement of the Case in the Petition except in one particular. Petitioner twice describes the tax bill it received as a "final" tax bill. Under the statutory scheme in Texas, Petitioner had an opportunity after receipt of such bill to protest any prior lack of notice; to obtain a hearing on such protest; and, if successful, to thereafter raise and receive a hearing on any other grounds of protest that it may have had concerning the assessment of such taxes. Accordingly, the tax bill only became "final" after Petitioner allowed the time for filing a protest to lapse without taking action.

REASONS FOR DENYING THE PETITION

Petitioner does not state any compelling reasons for granting its Petition. Although Petitioner urges in its Conclusion that granting the Petition is a "last resort to prevent the implementation of a system that will lead to nationwide abuse of the property taxpayers," in fact the complaints it raises are issues and interpretations of Texas state law by Texas courts. (". . . the decision by the Texas Court of Appeals does away with the due process protections contained in the [Texas] Tax Code and the Constitution.")[1] Petitioner offers no indication that any other states have similar statutory schemes, or that any have interpreted their own laws in any similar fashion. The decision of the Texas Court of Appeals[2] was based entirely on Texas law. Finally, Petitioner presents no valid constitutional claims for consideration.

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1. Petition for Writ of Certiorari p. 17

2. Appendix to Petition for Writ of Certiorari p. iii

I.

Due Process Only Requires Notice and an Opportunity To Be Heard Before a Final Deprivation of Property

Respondents do not disagree with the proposition that, before a taxing authority can finally deprive a property owner of property, the property owner must have notice of such event and an opportunity for hearing. Petitioner indisputably *had* such notice and opportunity.

Under the Texas statutory tax scheme as described in the Texas Court of Appeals' opinion[3], a property owner who wishes to complain about some aspect of his assessment must do so within the time limits set forth by statute. If it fails to do so, it loses the right of protest. If the property owner claims to have been deprived of the notice that would have triggered its duty to protest, it must follow a two-step process. First, the property owner must timely protest and obtain a hearing on the claim of lack of notice. If successful, the property owner may then further raise additional grounds of protest that it may have concerning the taxation of its property.[4] Thus, a tax on the property does not become "final" or unchallengeable until after the property owner has had an opportunity to complain about a lack of notice and about any underlying concerns about the tax.

Although Petitioner says "Under Texas law, assessments that have been approved by the appraisal review board are considered final",[5] that claim is not supported. Petitioner cites

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3. *Id.*

4. *See*, TEX. TAX CODE § 41.41.

5. Petition p. 14

Bass v. Aransas County Independent School District, 389 S.W. 2d 165, 172 (Tex. Civ. App.-Corpus Christi 1965, pet. denied). That case does not so state, nor could it. Appraisal review boards are not referred to in such decision, because they did not exist at that time but rather were created by an act of the 66th Texas Legislature in 1979.[6]

The case instead concerns boards of equalization, which existed under a statutory scheme that was entirely replaced when the Texas Tax Code was later enacted. As the case notes, under the scheme in place at that time, taxpayers had limited rights of relief once a plan of taxation was put into effect. The case contains not a single reference to the Texas Tax Code; or to the finality of tax bills under the Code, because the Code, with its rights of administrative and judicial determination of tax appraisal and assessment protests, did not exist when the case was decided.[7]

Here, Petitioner admittedly received notice that its property had been added to the tax roll; notice of the value at which the property had been appraised; notice of the amount of taxes owed on the property in the absence of any successful protest; and notice of the delinquency date for the taxes.[8]

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6. *See* Appendix pp. 1a-2a.

7. See the general description of the applicable Tax Code procedures in the Court of Appeals' decision in Appendix to Petition for Writ of Certiorari pp. vii-ix; xi

8. Statement of the Case at Petition p. 9

The core of the Petition is an assertion[9] that the tax bill that Petitioner admittedly received did not afford due process because it did not give Petitioner procedural direction concerning how to go about protesting the assessment. The Petition states that the tax bill "did not apprise CIT of its right to hearing nor of the statutes under which it could protest the tax bill," and that "CIT was not notified as to what remedies were available to it to contest the assessment."[10]

CIT knew that its property had been newly added to the tax rolls; knew the value at which the property was assessed; knew the amount of taxes imposed; and knew by when it had to pay such taxes to avoid delinquency. Thus, it had all the facts at hand to determine whether to take steps to protest such assessment. It had a statutory procedure available to it under state law to make such protest. It failed to take advantage of such procedure.

Petitioner's claim, clearly stated, is that due process requires taxing authorities to provide a taxpayer with individual notice of *how* to protest. However, the Petition cites no relevant authority to support such theory. The Petition notes the language in *Mullane v. Central Hanover Bank & Trust Co.*, that notice must be "reasonably calculated under all circumstances, to appraise the interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). CIT had exactly that. It knew about the tax and had the opportunity to object.

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9. Petition p. 13

10. *Id.*

Mullane does not require that the taxpayer be individually told *how* to object. This court has held the opposite in *Texaco, Inc. v. Short*, 454 U.S. 516, 531 n.25 (1982). The Court said that every citizen is charged with knowledge of relevant statutory provisions affecting the control or disposition of property, and that "All persons are charged with knowledge of statutes and must take note of the procedure adopted by them . . . This is especially the case with respect to those statutes relating to the taxation or condemnation of land." *Id.*, *citing*, *North Laramie Land Co. v. Hoffman*, 268 U.S. 276, 283, 45 S. Ct. 491, 494, 69 L. Ed. 953.

II.

Denton Central Appraisal District's Appraisal of the Property Was Not Rendered Void by Any Claimed Failure To Provide Notice Under Texas Tax Code § 25.19

CIT does not claim, nor could it claim, that it had no remedies available to correct any errors in the assessment of its property. Likewise, it does not claim that the remedies were not adequate. The decision of the Texas Court of Appeals correctly found CIT had remedies available to it that it failed to exercise on a timely basis.[11] Instead, CIT rather remarkably takes the position that it was "under no obligation to exhaust its administrative remedies under Tex. Tax Code 41.411 because the Denton Central Appraisal District did not acquire jurisdiction over CIT's property. . . ."[12]

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11. Appendix to Petition p. iii, at viii-ix.

12. Petition p. 16

CIT asserts that, under Texas law, it was entitled to a specific form of notice[13] that it claims it did not receive.[14] (Whether or not CIT proved in the trial court that it received such notice was a matter in dispute. Because the Court of Appeals found that CIT failed to exhaust its administrative remedies, it did not address this issue. *See* Appendix to Petition at xiii-xiv.)

CIT claims that this alleged failure to receive the 25.19 notice deprived Respondent of jurisdiction to appraise its property. Of course, to the extent that such claim rests on state law, it has been fully and finally decided against CIT.

Here, CIT relies primarily on *In re Chicago Rys. Co.*, 175 F.2d 282 (7th Cir. 1949), *cert. denied*, 380 U.S. 850 (1949). This case actually supports Respondent. In a passage quoted by Petitioner on page 16 of the Petition, the Court notes that its ruling is limited to situations involving a *changed* assessment made without notice or opportunity for hearing, *and which would be conclusive on the taxpayer.* In such cases, the assessment would be invalid. The Court specifically excepts from its ruling a *new* assessment, timely made, and says that in such case the taxpayer would have had to apply to the appropriate body for relief.

In CIT's situation, CIT's property was newly added to the tax rolls in the year in question. It has never claimed the tax bill that it received to be untimely. The tax bill was neither final nor conclusive, because upon receiving it, CIT had

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13. The notice provided by Texas Tax Code § 25.19. *See* appendix to Petition p. xxiii.

14. Statement of the Case, Petition p. 9

the opportunity under Tex. Tax. Code § 41.411 to obtain a hearing and raise its objections. *See* TEX. TAX CODE § 41.411. CIT failed or refused to exercise its rights, and such failure or refusal did not deprive Denton Central Appraisal District of jurisdiction over the appraisal of CIT's property.

CONCLUSION

For the reasons set forth above, Respondents respectfully request that the Petition for Writ of Certiorari filed by Petitioners be denied.

Respectfully submitted,

RANDEL B. GIBBS
Counsel of Record
ANDREA SHEEHAN
JOSEPH K. BALL
LAW OFFICES OF
ROBERT E. LUNA, P.C.
4411 North Central Expressway
Dallas, Texas 75205
(214) 521-8000

Counsel for Respondents

APPENDIX

Appendix A — Tex. Tax Code § 6.41

Tax Code
Title 1. Property Tax Code
Subtitle B. Property Tax Administration
Chapter 6. Local Administration
Subchapter C. Appraisal Review Board

§ 6.41. Appraisal Review Board

(a) The appraisal review board is established for each appraisal district.

(b) The board consists of three members. However, the district board of directors by resolution of a majority of its members may increase the size of the appraisal review board to the number of members the board of directors considers appropriate.

(c) To be eligible to serve on the board, an individual must be a resident of the district and must have resided in the district for at least two years.

(d) Members of the board are appointed by resolution of a majority of the appraisal district board of directors. A vacancy on the board is filled in the same manner for the unexpired portion of the term.

(e) Members of the board hold office for terms of two years beginning January 1. The appraisal district board of directors by resolution shall provide for staggered terms, so that the terms of as close to one-half of the members as possible expire each year. In making the initial or subsequent appointments, the

board of directors shall designate those members who serve terms of one year as needed to comply with this subsection.

(f) A member of the board may be removed from the board by a majority vote of the appraisal district board of directors. Grounds for removal are:

(1) a violation of Section 6.412, 6.413, 41.66(f), or 41.69; or

(2) good cause relating to the attendance of members at called meetings of the board as established by written policy adopted by a majority of the appraisal district board of directors.

CREDIT(S)

Acts 1979, 66th Leg., p. 2231, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 127, ch. 13, § 29, eff. Jan. 1, 1982; Acts 1989, 71st Leg., ch. 796, § 11, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 597, § 107, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 2nd C.S., ch. 6, § 8, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 154, § 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 299, § 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1039, § 4, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 639, § 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 354, § 1, eff. Jan. 1, 2002; Acts 2001, 77th Leg., ch. 1430, § 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 408, § 1, eff. Jan. 1, 2004.

Appendix B — Texas Tax Code § 41.41

Tax Code
Title 1. Property Tax Code
Subtitle F. Remedies
Chapter 41. Local Review
Subchapter C. Taxpayer Protest

§ 41.41. Right of Protest

(a) A property owner is entitled to protest before the appraisal review board the following actions:

(1) determination of the appraised value of the owner's property or, in the case of land appraised as provided by Subchapter C, D, E, or H, Chapter 23, determination of its appraised or market value;

(2) unequal appraisal of the owner's property;

(3) inclusion of the owner's property on the appraisal records;

(4) denial to the property owner in whole or in part of a partial exemption;

(5) determination that the owner's land does not qualify for appraisal as provided by Subchapter C, D, E, or H, Chapter 23;

(6) identification of the taxing units in which the owner's property is taxable in the case of the appraisal district's appraisal roll;

(7) determination that the property owner is the owner of property;

(8) a determination that a change in use of land appraised under Subchapter C, D, E, or H, Chapter 23, has occurred; or

(9) any other action of the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the property owner.

(b) Each year the chief appraiser for each appraisal district shall publicize in a manner reasonably designed to notify all residents of the district:

(1) the provisions of this section; and

(2) the method by which a property owner may protest an action before the appraisal review board.

CREDIT(S)

Acts 1979, 66th Leg., p. 2305, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 170, ch. 13, § 137, eff. Jan. 1, 1982; Acts 1985, 69th Leg., ch. 823, § 3, eff. Jan. 1, 1986; Acts 1989, 71st Leg., ch. 796, § 34, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 113, § 1, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 631, § 11, eff. Sept. 1, 1999.